

(2011) 10 DEL CK 0232

In the Delhi High Court

Case No : Writ Petition (C) 1652 of 2011

Sowar Virendra Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Citation : (2011) 10 DEL CK 0232

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : K. Ramesh and Ms. Archana Ramesh, for the Appellant; Anjana Gosain and Mr. Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Pithily stated the factual matrix in the captioned writ petition is that the petitioner was enrolled as a Sowar in 3 Cavalry of the Armored Regiment on 27 October 1992.

2. Thereafter, on 7th November 2002 the petitioner was posted to 94 (I) Race Squadron under the command of HQ 33 Armored Division. While working in the Race Squadron a Court of Inquiry was ordered against the petitioner to investigate the complaint made by Smt. Anita Singh wife of Sowar Baljit Singh for having held her hand and using criminal force on 3rd October 2008 to outrage her modesty at the Government accommodation allotted to her husband.

3. The Court of Inquiry was completed and it was held against the petitioner that he was blameworthy with respect to allegations made by Smt. Anita Singh and this was placed before the GOC 33 Armored Division who directed disciplinary action to be taken against the petitioner.

4. Since 94 (I) Race Squadron was attached with HQ 33 Armored Division for disciplinary purposes therefore as per Army Order 7/2000 the petitioner was attached to 234 Armored Engineer Regiment for finalization of disciplinary action.

5. Para 8 of the Army Order 7/2000, which is relevant needs to be reproduced. It reads as under:

Persons subject to the Army Act, committing offences while away from their parent units, will not, except in the case of offences committed by deserters, be returned to their units for disposal, as it would involve absence from normal duties of persons required as witnesses and escorts. In such cases, the formation commander within whose jurisdiction the offence was committed, will arrange for the individual concerned to be attached to a local unit for disposal of the case in accordance with the procedure outlined above.

6. It needs to be highlighted at this stage that when Summary of Evidence was being recorded at 234 Armored Engineer Regiment the said unit moved out from the jurisdiction of 33 Armored Division therefore the petitioner was re-attached with one Armored Engineer Regiment relieving unit of 234 Armored Engineer Regiment.

7. The remaining Summary of Evidence in the case of the petitioner was completed by one Armored Engineer Regiment and after finalization of the same the matter was referred to DJAG, HQ 1 Corp. for pre-trial advice with recommendations of Summary Court Martial. The DJAG concurred with the recommendations of GOC 33 Armored Division and thus the petitioner was tried by Summary Court Martial by the Commanding Officer of one Armored Engineer Regiment.

8. At the Summary Court Martial, the petitioner was held guilty and punishment inflicted of being reduced in rank and since he had completed 18 years of service which was beyond the service which a Sowar could render, petitioner was discharged from service on 31.3.2011 and needless to state this was with pensionary benefits.

9. The petitioner has filed the instant petition placing reliance upon a decision of a Division Bench of this Court reported as Ex. LN Vishav Priya Singh Vs. Union of India (UOI) and Others, wherein it was held that only that Commanding Officer can try a jawan at a Summary Court Martial who is the Commanding Officer of the Unit to which the accused belongs. It was highlighted by the petitioner that he was a Sowar belonging to 3 Cavalry and thus the Commanding Officer of 3 Cavalry alone could have tried him.

10. At the outset we may highlight that the petitioner was posted out from 3 Cavalry to 94 (1) Race Squadron on 7.11.2002 and thus the claim predicated with respect to petitioner belonging to 3 Cavalry are fundamentally incorrect.

11. In any case the issue needs to be considered whether belonging to 94 (1) Race Squadron, the Commanding Officer of the 1 Armored Engineering Regiment could have tried the petitioner as the Commanding Officer for the reason, as noted hereinabove the complaint was made when the petitioner was with the Race Squadron and the Court of Inquiry was ordered when he was with the said

Squadron.

12. Now, we have reproduced hereinabove para 8 of Army Order No.7/2000 which clearly stipulates that persons subject to the Army Act committing offence while away from their parent units will not except in case of offences committed by deserters be returned to their units for disposal as it would involve absence from normal duties of persons required as witnesses and escorts.

13. The petitioner admittedly was not a deserter when the alleged offence was committed. Thus there was no necessity of reverting the petitioner to the parent unit.

14. It needs to be highlighted that the concluding part of para 8 of the Army Order clearly records that in such cases i.e. in cases where the person is not a deserter the formation Commander within whose jurisdiction the offence was committed will arrange for the individual concern to be attached to the local unit for disposal of the case.

15. The Army Order in question is based on a public policy. A person on duty stands differently from a person who is a deserter. A person on duty being subject to a disciplinary action would be better placed at the local unit for the reason disciplinary proceedings are conducted at the headquarters or the place where the offence was committed as the witnesses would be present there and would not be required to be called or escorted from far off place. If the unit moves to a different place, the offender needs to be attached the local unit so that the aforesaid purpose is achieved.

16. We find the action taken being in conformity with Army Order 7/2000.

17. As regards the decision relied upon it would be necessary for us to highlight that Army Order 7/2000 was not considered by the said Division Bench. The reason appears to be that of the batch of writ petitions decided, most of the cases pertained to disciplinary action taken and completed prior to the year 2000 when Army Order 7/2000 was not in existence and pertaining to a few writ petitions which pertained to action completed after the year 2000, for reason unknown to us the army authorities did not plead a defense with reference to Army Order 7/2000.

18. We may conclude by noting that the decision of the Division Bench of this Court is currently under challenge before the Supreme Court and contempt action has been stayed.

19. We highlight that our decision is based not on a disagreement with the view taken by the Division Bench but on an interpretation of Army Order 7/2000 which was not considered by the said Division Bench.

20. No other argument being advanced on the merits of the trial and the writ petition being argued only on the plea of lack of jurisdiction of the Commanding Officer concerned, we dismiss the writ petition but make no order as to costs.